

IN THE ORPHANS= COURT DIVISION
OF THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

IN RE: :
 : **No. 712, YEAR OF 1963**
MILTON HERSHEY SCHOOL TRUST. :

MOTION FOR SPECIAL EX PARTE
INJUNCTIVE RELIEF PURSUANT TO 42 Pa.R.C.P. No. 1531(a)

TO THE HONORABLE WARREN G. MORGAN, SENIOR JUDGE OF THE COURT:

The Commonwealth of Pennsylvania by its Attorney General, D. Michael Fisher, acting in his capacity as *parens patriae* (the ~~A~~Attorney General@), respectfully moves this Honorable Court for special *ex parte* injunctive relief against the Milton Hershey School (the ~~A~~School), and the Hershey Trust Company as the Trustee of the Milton Hershey School Trust (the ~~A~~Trustee@), pursuant to 42 Pa.R.C.P. No. 1531(a), and in support thereof offers the following:

1. The Attorney General filed his verified petition for a citation for a rule to show cause against the School and Trustee and hereby incorporates each allegation of fact contained therein as if fully set forth.
2. On August 19, 2002, this Honorable Court granted the Attorney General's request for citation and set a return date of twenty (20) days from the date of service thereof.
3. On that same date of August 19, 2002, counsel for the respondents accepted service of the petition and order issuing the citation and respondents=answer is therefore due on or before September 9, 2002.

4. Based upon the allegations contained in the subject petition, unless immediate *ex parte* injunctive relief is granted by the Court, the petitioner as *parens patriae*, the children enrolled in the school and the residents of Pennsylvania will suffer irreparable harm in that the School and Trustee are in the process of pursuing a public sale of the School Trust's controlling interest in Hershey Foods Corporation as reported in today's issue of ***The Patriot-News*** which indicates,
 - a. that the respondents are actively conducting tours of the facilities at Hershey Foods Corporation, and
 - b. that the respondents are materially concerned that their fiduciary duties constrain them to accept the highest price offered to avoid liability to minority shareholders.
5. Despite the Attorney General's pending petition for citation, he is without any information regarding the current status of the respondents' sale process.
6. As a result, the School and Trustee may receive and otherwise act upon proposals in furtherance of the sale of the School Trust's controlling interest in Hershey Foods Corporation prior to a disposition of the Attorney General's underlying petition by this Honorable Court.
7. Any such action by the School and Trustee prior to a determination of the Attorney General's underlying petition will undermine this Court's discretion and authority to assess the merits of all proposals that may be received and inure to the detriment of,

- i. the School Trust's ongoing mission,
 - ii. the children currently enrolled at the school as well as the those who will attend in the future,
 - iii. the Hershey community, and
 - iv. the public-at-large as the real party in interest and ultimate beneficiary of the School Trust.
8. Accordingly, in order to ensure that all interests at stake are adequately protected, immediate *ex parte* injunctive relief is necessary to avoid a premature commitment to alienate the assets at issue.
9. Granting the requested special *ex parte* injunctive relief is necessary to ensure that the School Trust's ongoing mission and the children benefitted thereby will not suffer immediate and irreparable harm.
10. Granting the requested special *ex parte* injunctive relief will not result in any irreparable harm to the School or Trustee.
11. Under the above circumstances, the Attorney General has no other adequate remedy at law.

WHEREFORE, the Attorney General respectfully requests that this Honorable Court:

- A. Preserve the status quo by preliminarily enjoining the respondents from committing to sell, transfer, exchange, lease, or otherwise alienate or dispose of its holding in Hershey Foods Corporation without the prior approval of this Honorable Court and after notice to the Attorney General;
- B. Pursuant to Pa.R.C.P. No. 1531(d), set a date certain within five (5) days hereof on which to conduct a hearing to determine whether the instant *ex parte* injunctive relief should be dissolved or continued preliminarily until an ultimate disposition on the Attorney General's underlying action is determined by the Honorable Court; and
- C. Order any other relief which this Honorable Court deems appropriate.

Respectfully submitted,

D. MICHAEL FISHER,
Attorney General

ALEXIS L. BARBIERI
Executive Deputy Attorney General

By: _____

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August 23, 2002

VERIFICATION

I, MARK A. PACELLA, Chief Deputy Attorney General, being duly sworn according to law, hereby state that I am authorized to make this verification on behalf of the petitioner, and that the facts in the foregoing petition are true and correct to the best of my knowledge, information and belief.

MARK A. PACELLA
Chief Deputy Attorney General

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ORDER

AND NOW, this 23RD day of August, 2002, upon consideration of the foregoing motion for special *ex parte* injunctive relief and the averments contained in the underlying petition, a hearing is hereby set for the ____ day of August, 2002, at _____ a.m/p.m., in Courtroom No. ____ of the Orphans= Court Division of the Dauphin County Court of Common Pleas, Front and Market Streets, Harrisburg, Pennsylvania 17101, to determine whether the Milton Hershey School and the Hershey Trust Company as Trustee of the Milton Hershey School Trust, should be enjoined from committing to sell, transfer, exchange, lease, or otherwise alienate or dispose of its holding in Hershey Foods Corporation without the prior approval of this Honorable Court and after notice to the Attorney General.

BY THE COURT:

Warren G. Morgan, S. J.